

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRIAN PLASKON,

Plaintiff,

v.

PUBLIC HOSPITAL DISTRICT NO. 1 OF
KING COUNTY d/b/a VALLEY MEDICAL
CENTER, *et al.*,

Defendants.

Case No. C06-0367RSL

ORDER DENYING DEFENDANTS'
MOTIONS FOR ATTORNEY'S FEES
AND REFERRING MOTION FOR
COSTS

I. INTRODUCTION

This matter comes before the Court on defendants' motions for attorney's fees and costs (Dkt. #43, #47). On November 16, 2007, the Court granted defendants' motion for summary judgment and dismissed all of plaintiff's claims.

For the reasons set forth below, the Court denies defendants' motions for attorney's fees.¹

II. ANALYSIS

Defendants initially filed their motion for attorney's fees pursuant to RCW 4.84.185. After plaintiff's counsel informed them that the statute does not apply to actions in federal court

¹ Because the Court finds that this matter can be decided on the memoranda, declarations, and exhibits, plaintiff's request for oral argument is denied.

1 applying only federal law, defendants withdrew their request. On December 14, 2007,
2 defendants filed a “supplemental memorandum” requesting an award of fees under 42 U.S.C. §
3 1988. There is no provision in the Local Rules for filing a “supplemental memorandum,” nor
4 has the Court approved it. Even if the Court were to construe that filing as a motion, it was
5 untimely. The statute itself does not provide a time limit, but Fed. R. Civ. P. 54(d)(2)(B)(i)
6 does: “Unless otherwise provided by statute or order of the court, the motion [for attorney’s
7 fees] must be filed no later than 14 days after entry of judgment.” In this case, judgment was
8 entered on November 19, 2007.² Despite the allegation to the contrary, plaintiff’s counsel did
9 not mislead defense counsel into missing the deadline. Nor will the Court enlarge the deadline.
10 Even if the motion had been timely, it would be denied for the reasons set forth below.

11 Defendants have also requested sanctions pursuant to the Court’s inherent authority and
12 under 28 U.S.C. § 1927. Those requests are timely. See Fed. R. Civ. P. 54(d)(2)(E) (explaining
13 that the time limit in subsection (B) do not apply to sanctions under § 1927). District courts
14 have “the inherent power to impose sanctions on counsel who willfully abuse judicial
15 processes.” United States v. Blodgett, 709 F.2d 608, 610 (9th Cir. 1983) (internal citation and
16 quotation omitted). Section 1927 states: “Any attorney or other person admitted to conduct
17 cases in any court of the United States . . . who so multiplies the proceedings in any case
18 unreasonably and vexatiously may be required by the court to satisfy personally the excess
19 costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” Plaintiff
20 incorrectly argues that the statute does not apply to him. Plaintiff is an attorney licensed to
21 practice law in Washington, and the statute applies to *pro se* parties. See, e.g., Wages v. IRS,
22 915 F.2d 1230, 1235-36 (9th Cir. 1990).

23 “The imposition of sanctions under Section 1927 requires a finding that counsel acted
24 recklessly or in bad faith, while those imposed under the court’s inherent power require a

25
26 ² Plaintiff argues that judgment was entered on November 16, 2007, the date on the
27 judgment, but the docket plainly reflects that the judgment was entered on November 19, 2007.

1 finding that counsel's conduct constituted or was tantamount to bad faith." Blodgett, 709 F.2d
2 at 610 (internal citations and quotations omitted). Plaintiff submitted two requests for relief
3 from the Court as letters, despite the Court's warning that any such request must be contained in
4 a motion and otherwise comply with the Local Rules. Defendants also argue that plaintiff filed,
5 then abandoned, his claim, just as he did during the hospital's internal review process.
6 Understandably, plaintiff's conduct has frustrated defendants, and it has forced them to incur
7 significant defense costs. However, plaintiff's failure to take discovery or to more vigorously
8 pursue this case could, but does not necessarily, reflect an improper purpose in filing it.³
9 Plaintiff's First Amended Complaint included time barred claims, but he voluntarily dismissed
10 them once defendants raised the issue. Plaintiff did not respond to defendants' motion for
11 summary judgment, but he did request a continuance to try to do so while proceeding *pro se*. In
12 addition, although the Court granted defendants' motion for summary judgment, it cannot say
13 that plaintiff's claims were brought in bad faith or so frivolous as to warrant sanctions.⁴

14 The most troubling conduct was that plaintiff's counsel belatedly served deposition
15 notices after the Court had already dismissed the case, apparently in an attempt to deter the
16 filing of a motion for fees and costs. Declaration of Daniel Brown, (Dkt. #47), Ex. B (plaintiff's
17 counsel stating that plaintiff would "withdraw the discovery if defendants agree that they will
18 not seek fees and expenses"). However, plaintiff's newly-retained counsel, not plaintiff,
19 engaged in that conduct, and defendants have not sought sanctions against counsel.

20 III. CONCLUSION

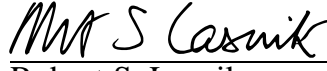
21 For all of the foregoing reasons, the Court DENIES defendants' motion for attorney's
22 fees (Dkt. #47) and DENIES IN PART defendants' motion for attorney's fees and costs (Dkt.

23 ³ Similarly, plaintiff's decision to sue some, but not all, of the members of the hospital's
24 Board of Commissioners could indicate an improper motive, but the record is insufficient to
25 reach that conclusion.

26 ⁴ The Court made this determination without considering the declarations that plaintiff
27 submitted to the Court for the first time with his opposition to the motion for fees.

1 #43) to the extent that it sought attorney's fees. The motion for costs (Dkt. #43) is referred to
2 the Clerk of the Court for resolution.

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4 DATED this 28th day of January, 2008.

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7 Robert S. Lasnik
8 United States District Judge
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